

REMARKS

Claims 1-41 are currently pending in the subject application and are presently under consideration. Claims 1, 9, 11, 13, 16, 19, 21, 23, 24, 26-28, 33, 34, 40, and 41 have been amended as shown on pages 2-7 of the Reply.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Rejection of Claims 1-9, 11-13, 15, 18-25, 28-37 and 39 Under 35 U.S.C. §103(a)

Claims 1-9, 11-13, 15, 18-25, 28-37 and 39 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Ikeda, *et al.* (2003/0063571), in view of Gauvin, *et al.* (7,197,489). It is respectfully submitted that this rejection should be withdrawn for at least the following reasons. Neither Ikeda, *et al.* nor Gauvin, *et al.*, individually or in combination, teach or suggest each and every feature set forth in the subject claims.

To reject claims in an application under § 103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some apparent reason to combine the known elements in the fashion claimed by the patent at issue (e.g., in the references themselves, interrelated teachings of multiple patents, the effects of demands known to the design community or present in the marketplace, or in the knowledge generally available to one of ordinary skill in the art). To facilitate review, this analysis should be made explicit. Second, there must be a reasonable expectation of success. ***Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.*** See MPEP § 706.02(j). See also *KSR Int'l Co. v. Teleflex, Inc.*, 550 U. S. ___, 04-1350, slip op. at 14 (2007). The reasonable expectation of success must be found in the prior art and not based on applicant's disclosure. See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (emphasis added).

The subject claims relate to a system and method for gathering data relating to the health, performance, and/or utilization of one or more networked systems, aggregating the data according to user-defined preferences, storing the aggregated data in a database, and utilizing the aggregated data to generate outputs relating to the state of the one or more networked systems. The outputs can be used to notify a user (often a system administrator) of potential problems

detected on the system, generate reports based on the data, and provide automatic control of aspects of the networked system in response to a detected state of the system. The output can also be used to automatically limit a user's utilization of one or more aspects of a networked system. For example, the system can monitor and limit a system user's bandwidth usage, e-mailing, faxing, or Internet usage. In particular, amended independent claim 1 (and similarly amended independent claim 28) recites, *the output utilized to automatically limit a user's utilization of at least one aspect of the networked system.*

The cited references do not disclose these features of the subject claims. Ikeda, *et al.* teaches a network topology collection device that determines the connection states of routes between transmission devices on a network, but nowhere discloses automatically limiting a user's utilization of a network in any way. Gauvin, *et al.* relates to a method for collecting network management data associated with network components into managed data objects. The cited reference discloses methods for automatically creating new managed data objects when a new network component is detected, and for inferring the presence of network components that do not have associated agents for transmitting management data. However, while Gauvin, *et al.* is concerned with the collection of management data from networked objects, the cited reference does not contemplate using collected data to *automatically limit a user's utilization* of an aspect of the network.

The subject claims also disclose that this limitation of a user's system utilization can be driven by a user-defined *utilization priority*. This feature allows a first user's utilization of a system resource to automatically be made subservient to a second user's utilization of the same resource if the second user has a higher utilization priority. In particular, amended independent claim 34 recites, *means for **prioritizing utilization** of at least one resource on the networked system; and means for **automatically curtailing utilization** of a resource by a first user of the networked system when a second user with a higher utilization priority requires the same resource.* As discussed above, neither cited art reference discloses automatically limiting a user's utilization of a system resource. The cited references therefore also fail to disclose the more specific case of limiting a user's utilization of a resource *based on a utilization priority*.

In addition to the features discussed above, the subject claims also teach that the aggregated data can be used to detect undesired system states and to automatically effectuate corrective responses. For example, amended claim 19 (and similarly amended claim 33) recites,

the output utilized to provide automatic software updates to at least one system component on the networked system in response to the state of the subset of the plurality of system components, while amended claim 21 recites, *the system control parameter comprising at least one of a load shed command or a load balancing command.* Neither Ikeda, *et al.* nor Gauvin, *et al.* teach or suggest these automatic corrective features. Although both cited references relate generally to the collection of network-related data, neither reference contemplates *automatically updating software* on a system component in response to the system's state. Nor do the references contemplate automatically requesting a load shedding or load balancing function. With particular respect to the load shed and load balancing commands disclosed in claim 21, the Examiner asserts that "using such command is inherent for the purpose of accomplishing the objective of this invention [of Ikeda, *et al.*]." However, this alleged purpose is in no way suggested in Ikeda, *et al.*, either expressly or inherently. Rather, the stated purpose of Ikeda, *et al.* is to determine a topology of a network and to ascertain the connection state of routes on the network. The cited reference does not contemplate automatically issuing commands to shed a load on the system or to load balance between servers or multiple systems. Indeed, it is unclear how the topology information collected by Ikeda, *et al.* could be utilized in connection with load shedding or load balancing, as the Examiner appears to suggest.

In view of at least the foregoing, it is respectfully submitted that Ikeda, *et al.* and Gauvin, *et al.*, individually or in combination, do not teach or suggest all features set forth in amended independent claims 1, 28, and 34 (and all claims depending there from), and therefore fail to make obvious the subject claimed invention. It is therefore requested that this rejection be withdrawn.

II. Rejection of Claims 10, 14, 16, 17, 26, 27, 40 and 41 Under 35 U.S.C. §103(a)

Claims 10, 14, 16, 17, 26, 27, 40 and 41 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Ikeda, *et al.* (2003/0063571), and Gauvin, *et al.* (7,197,489), in view of Anerousis, *et al.* (6,393,472). However, claims 10, 14, 16, 17, 26, and 27 depend from amended independent claim 1. As discussed *supra*, neither Ikeda, *et al.* nor Gauvin, *et al.* disclose *automatically limiting a user's utilization of at least one aspect of a networked system*, as taught in that amended independent claim. Anerousis, *et al.*, which relates to a method for aggregating and storing network management information in an aggregated model object, fails to remedy this

deficiency. Specifically, Anerousis, *et al.* is primarily concerned with the collection, aggregation, and presentation of network management data, but does not contemplate *automatically limiting resource utilization* on a system based on the aggregated data. Hence, none of the cited references suggest this feature in any way.

Similarly, claims 40 and 41 depend from amended independent claim 34, which discloses automatically limiting a user's utilization of a system resource based on a defined *utilization priority*. As discussed above, Ikeda, *et al.* and Gauvin, *et al.* fail to disclose a utilization priority, and Anerousis, *et al.* does not remedy this deficiency.

In view of at least the foregoing, it is respectfully submitted that Ikeda, *et al.* and Gauvin, *et al.*, alone or in combination with Anerousis, *et al.*, do not disclose each and every feature set forth in amended independent claims 1 and 34 (and all claims depending there from), and as such fail to anticipate the subject claims. Accordingly, this rejection should be withdrawn.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP503US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

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